

REMARKS

This Application has been carefully reviewed in light of the Final Action mailed August 22, 2006. Applicant respectfully requests reconsideration and favorable action in this Application.

Claims 10, 11, and 13-24 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Cao, et al. in view of McAllister, et al. Independent Claims 10 and 17 recite in general the ability to send a third message over a reverse notification path from a second switch to a first switch in response to the second switch receiving the traffic flow from the first switch over the working path, wherein the interruption of the third message controls protection switching by the first switch. By contrast, the Cao, et al. application performs protection switching at its downstream egress router by transmitting the same data along two different paths and allowing the downstream egress router to choose one of the paths as its primary source. Thus, there is no controlling of protection switching by a first switch in the Cao, et al. application as required in the claimed invention. Moreover, the Examiner readily admits that the Cao, et al. application does not disclose the sending of the second and third messages of the claimed invention.

To support the deficiency in the Cao, et al. application, the Examiner cites the keep-alive polling process of the McAllister, et al. patent. However, the McAllister, et al. patent requires the constant sending of keep-alive protocol signaling messages and the return of acknowledgment signaling messages independent of the transfer of traffic flow over a working path in a network. The protocol and acknowledgment signaling messages, whether in the form of sequenced protocol message units or separately sequenced poll and stat messages,

of the McAllister, et al. patent are not used to establish working or protection paths or a reverse notification path in its network, but merely to determine whether a first node receives a signaling message from a second node to which it can return an acknowledgment signaling message indicating that it is still operational. Moreover, the protocol and acknowledgment signaling messages are sent on direct node to node signaling paths separate from the data path in the network. The McAllister, et al. patent has no capability at any of its nodes to determine whether data on its data path was received let alone an ability to provide such an indication in a message along a reverse notification path as provided in the claimed invention. Any problems occurring in the data path of the McAllister, et al. patent would not be recognized as long as the protocol and acknowledgment messages are sent and received in a proper manner. Accordingly, the protocol and acknowledgment signaling messages have no relationship with the traffic flow in the network of the McAllister, et al. patent. Thus, the McAllister, et al. patent does not send a third message from a second switch to a first switch in response to traffic flow being received at the second switch from the first switch over a working path that indicates whether traffic flow was received as required by the claimed invention. Moreover, the McAllister, et al. patent does not use the interruption of the third message to control protection switching by the first switch. When the McAllister, et al. patent detects a link failure, the functioning part of the network transmits a signal indicative of the failure and it is this signal that triggers an attempt to re-route the connection along a different path. See col. 10, lines 2-8, of the McAllister, et al. patent.

Moreover, the Cao, et al. application would not be able to use the acknowledgment messages generated by the McAllister, et al. patent as the Cao, et al. application would still perform protection switching at a downstream router by selecting one of two paths carrying the same data. The structure that would result from using the protocol and acknowledgment signaling messages transmitted along a signaling path independent of the data path as disclosed in the McAllister, et al. patent within the MPLS data network of the Cao, et al. application that implements an egress router for selection of one of two data paths carrying the same data would still lack sending of a third message, indicating whether traffic flow was received, by a second switch in response to receiving traffic flow from a first switch so that the first switch can control protection switching as required in the claimed invention. Therefore, Applicant respectfully submits that Claims 10, 11, and 13-24 are patentably distinct from the proposed Cao, et al. - McAllister, et al. combination.

Claims 1, 2, 4, 5, and 7-9 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Cao, et al. in view of McAllister, et al. and further in view of Hwang, et al. Independent Claim 1 recites ". . . the third message indicating whether the traffic flow sent on the working path was received intact and on time by the second switch." The Examiner cites the Hwang, et al. patent to support that a message is sent when data has been received without any errors. However, the Hwang, et al. patent fails to determine whether the data has been received on time as provided in the claimed invention. The Cao, et al. application and the McAllister, et al. patent are also silent with respect to determining whether data has been received on time as well as

intact. Moreover, the deficiencies in the combination of the Cao, et al. application and the McAllister, et al. patent discussed above apply equally as well to Independent Claim 1. With respect to the combination with the Hwang, et al. patent, the Hwang, et al. patent discloses resending of data upon not receiving an acknowledgment signal that data was received intact. The functionality of the Hwang, et al. patent would make it incompatible with the Cao, et al. application and the McAllister, et al. patent to justify their combination. Therefore, Applicant respectfully submits that Claims 1, 2, 4, 5, and 7-9 are patentably distinct from the proposed Cao, et al. - McAllister, et al. - Hwang, et al. combination.

Claim 3 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Cao, et al. in view of McAllister, et al. and Hwang, et al. and further in view of Aukia, et al. Independent Claim 1, from which Claim 3 depends, has been shown above to be patentably distinct from the proposed Cao, et al. - McAllister, et al. - Hwang, et al. combination. Moreover, the Aukia, et al. patent does not include any additional disclosure combinable with either the Cao, et al. application, the McAllister, et al. patent, or the Hwang, et al. patent that would be material to patentability of these claims. Therefore, Applicant respectfully submits that Claim 3 is patentably distinct from the proposed Cao, et al. - McAllister, et al. - Hwang, et al. - Aukia, et al. combination.

Claim 12 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Cao, et al. in view of McAllister, et al. and further in view of Aukia, et al. Independent Claim 10, from which Claim 12 depends, has been shown above to be patentably distinct from the proposed Cao, et al. - McAllister, et al. combination. Moreover, the Aukia, et al.

patent does not include any additional disclosure combinable with either the Cao, et al. application or the McAllister, et al. patent that would be material to patentability of these claims. Therefore, Applicant respectfully submits that Claim 12 is patentably distinct from the proposed Cao, et al. - McAllister, et al. - Aukia, et al. combination.

Claim 6 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Cao, et al. in view of McAllister, et al. and further in view of Lemieux. Independent Claim 1, from which Claim 6 depends, has been shown above to be patentably distinct from the proposed Cao, et al. - McAllister, et al. combination. Moreover, the Lemieux patent does not include any additional disclosure combinable with either the Cao, et al. application or the McAllister, et al. patent that would be material to patentability of this claim. Therefore, Applicant respectfully submits that Claims 3 and 12 are patentably distinct from the proposed Cao, et al. - McAllister, et al. - Lemieux combination.

The Examiner relies on the P-NNI signaling messages of the McAllister, et al. patent to detect a link failure and states that these signaling messages are part of the traffic flow for a data link. However, the McAllister, et al. patent clearly shows that the signaling messages are sent on a signaling link separate from the data traffic carried in ODR SPVC links. Moreover, the P-NNI signaling messages provided by the McAllister, et al. patent are not sent in response to receiving the traffic flow on the working path as required in the claimed invention as the P-NNI signaling messages of the McAllister, et al. patent are generated and sent independently of the data traffic carried in the ODR SPVC links. As a result, the McAllister, et al. patent has no capability to determine whether its data traffic was received on time as

provided by the claimed invention. Thus, the Examiner's reliance on the McAllister, et al. patent for this feature is misplaced. Further, the Examiner has yet to show that one of skill in the art would consider combining the Cao, et al. patent having egress routing control with the McAllister, et al. patent having independent signaling links with source routing control. The Examiner merely is taking isolated disclosures from incompatible references in an improper hindsight rejection of the claimed invention. Therefore, Applicant respectfully submits that the claimed invention is patentably distinct from the cited references.

This Response to Examiner's Final Action is necessary to address the Examiner's characterization of the cited art in relation to the features of the claimed invention. This Response to Examiner's Final Action could not have been presented earlier as the Examiner has only now provided the current characterization of the cited art in support of the rejections of the claims.

CONCLUSION

Applicant has made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other apparent reasons, Applicants respectfully request full allowance of all pending claims.

The Commissioner is hereby authorized to charge any fees or credit any overpayments associated with this Application to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.

Attorneys for Applicants

A handwritten signature in black ink, appearing to read "Charles S. Fish", is written over the printed name.

Charles S. Fish

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